

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

KOG PROPERTIES, LLC,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 21-cv-00355-DWD
)	
NATIONWIDE INSURANCE)	
COMPANY,)	
and AMCO INSURANCE COMPANY,)	
)	
Defendants.)	

ORDER ADOPTING REPORT & RECOMMENDATION

DUGAN, District Judge:

On February 26, 2021, Plaintiff, Kog Properties, LLC, filed breach of contract and Section 155 claims against Defendants Nationwide Insurance Company (“Nationwide”) and AMCO Insurance Company (“AMCO”) in the Circuit Court of Madison County, Illinois (Doc. 5). On April 2, 2021, AMCO removed the action to this Court based on diversity jurisdiction (Doc. 1).

On April 9, 2021, AMCO filed a Partial Motion to Dismiss seeking to dismiss Plaintiff’s Section 155 Claim, arguing that Plaintiff failed to allege facts that demonstrate vexatious or unreasonable conduct, and that a bona fide dispute exists between Plaintiff and Defendant concerning Defendant’s investigation of Plaintiff’s claim for coverage precluding Plaintiff’s claim (Doc. 5). On May 18, 2021, Plaintiff filed a Motion to Remand alleging a statutory defect exists because Defendant Nationwide failed to consent to

AMCO's notice of removal (Doc. 18). The parties further dispute whether Nationwide is a legal entity that has been properly joined and served (Doc. 18).

This matter was assigned to Magistrate Judge Gilbert C. Sison pursuant to Administrative Order 257. Not all parties have had the opportunity to consent to magistrate judge jurisdiction, therefore on November 22, 2021, Judge Sison submitted a detailed Report & Recommendations (Doc. 37) to the undersigned District Judge for consideration pursuant to 28 U.S.C. § 636(b).

According to the Report, Plaintiff failed to raise its objection to AMCO's notice of removal within thirty days after the notice of removal was filed, as required by 28 U.S.C. § 1447(c). Judge Sison found that Plaintiff waived its objection and its motion for remand was untimely. Judge Sison further found that in the furtherance of justice AMCO must be permitted to amend its notice of removal to cure any defects given the confusion over whether Nationwide is a non-existent entity or a misnamed defendant. The Report recommends that the undersigned deny Plaintiff's motion for remand, and that AMCO be permitted to amend its notice of removal to cure any defects.

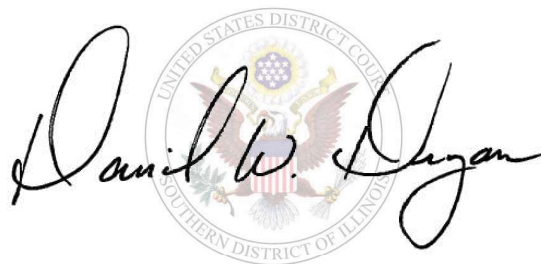
As for AMCO's partial motion to dismiss, Judge Sison found that Plaintiff's Section 155 Claim withstands dismissal under Federal Rule of Civil Procedure 12(b)(6) because the allegations provide the possibility that plaintiff can offer additional support for its claim, and Defendant failed to identify undisputed facts that establish a bona fide dispute. The Report recommends that the undersigned deny AMCO's partial motion to dismiss.

The Report clearly states that any objections to Judge Sison's recommendation were due by December 6, 2021. No objections were filed by that deadline, nor did any party move for additional time to file objections. Accordingly, this Court need not conduct a *de novo* review. See 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a *de novo* determination of those portions of the report or specified findings or recommendations to which objection is made."); Fed. R. Civ. P. 72(b)(3) ("The district judge must determine *de novo* any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions").

Accordingly, the Court **ADOPTS** in its entirety Magistrate Judge Sison's Report and Recommendations (Doc. 37) and **DENIES** Plaintiff's Motion to Remand (Doc. 18) and Defendant AMCO's Partial Motion to Dismiss (Doc. 5). AMCO is granted leave to amend its Notice of Removal by **December 22, 2021** to add the name of the misnamed Defendant Nationwide.

SO ORDERED.

Dated: December 8, 2021



DAVID W. DUGAN
United States District Judge